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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO. 457

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

Vs.

UNITED STATES OF AMERICA,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO._____

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

Vs.

UNITED STATES OF AMERICA,

PETITION FOR WRIT OF CERTIORARI

The Petitioner, C. J. Adams alias Charlie Adams, respectfully shows to this Honorable Court:

A.

STATEMENT OF MATTER INVOLVED.

The Petitioner (a negro Notary Public) was indicted with Walter Towns and Carrie Lee Towns (negroes) in the District Court of the United States for the Southern District of Alabama, Northern Division, May Term, 1945, on three counts—Counts 2, 4 and 6 (R. pp. 2-9)—for unlawfully aiding, counseling and abetting John Towns and Samuel B. and Samuel C. Towns (twins), sons of Walter and Carrie Lee Towns, to unlawfully and knowingly fail and neglect to present themselves for registration on September 19, 1944, under the Selective Service and Training Act of 1940, as amended (U. S. Code, Title 50, Appendix Sec. 303-318); and, under Count 7 (R. pp. 9-17), for conspiring together and with said three sons of said co-defendants

to cause said three sons to knowingly and unlawfully evade registration under said Act by falsely pretending that each of said sons was under 18 years of age.

In the conspiracy Count, the only overt acts alleged to have been committed by the Petitioner were:

> (a) the signing by him, as a Notary Public, of a certificate that he had examined a family bible in the possession of Carrie Lee Towns, the mother of said negro boys, which was published by Collins Clear Type Press, in which the year of publication was not shown, which bible showed that each of said sons had been born at Pleasant Hill, Alabama, and showed the date of birth of John Towns as October 9, 1928, and the date of birth of Samuel C. and Samuel B. Towns (the twins) as June 9, 1930, and that the name of the father was Walter Towns and the name of the mother was Carrie Lee Towns; and that said facts appeared to have been recorded many years ago; and
>
> (b) administering the oath or taking the acknowledgments of the three sons and the mother in the affidavits stating the age of each of said sons. (R. pp. 9-17).

It is alleged that such certificate and affidavits were thereafter filed with the Bureau of Vital Statistics, Alabama State Department of Health, for the purpose of obtaining delayed birth certificates for said three sons of said co-defendants.

The co-defendants, parents of the three negro boys, plead guilty to the indictment, and thereafter, on November 7, 1945, the Petitioner, who plead not guilty, was tried before a jury who found him guilty as charged in the indictment. (R. p. 32).

On November 9, 1945, Petitioner was sentenced for one year and a day and fined $250.00.

Petitioner thereupon filed a motion to set aside the verdict and grant a new trial. (R. pp. 34-43), which motion (as amended) was overruled on November 21, 1945. (R. pp. 43-44).

On November 21, 1945, Petitioner took an appeal to the United

States Circuit Court of Appeals for the Fifth Circuit (R. pp. 44-47).

The judgment appealed from was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on July 9, 1946. (R. p.). Application for rehearing in said cause was denied on August 5, 1946. (R. p.).

The evidence showed that the mother and her three sons were unknown to the Petitioner until their appearance before him on March 23, 24 and 25, 1944, when he was requested to take their acknowledgements to affidavits to be used by them in applying for what are termed under the Alabama law as delayed birth certificates, where no birth certificate was issued at the time of birth. The Appellant in his capacity as Notary Public under the law of the State of Alabama was required to examine the family bible in which the births were registered, if such was the case, and to certify that he had examined such bible, stating the name of the person having possession of the bible, the name of the Publisher of the bible, the year of the publication of the bible, and to state whether, from the appearance of such bible, the date of birth of the child, the place of birth, the name of the father and mother, were recorded many years ago. These facts were so certified to, as provided in the certificate, except that in the blank space in the form of the certificate where it required the year of publication of the bible to be inserted it was stated, "year not shown". The date of the birth of John Towns as recorded in the bible was October 9, 1928, and the date of the birth of the twins, Samuel B. and Samuel C., was recorded as June 9, 1930, and these dates of birth were so stated in affidavits executed by the mother and sons, which affidavits were sworn to before the Petitioner as Notary Public. The evidence on the trial was to the effect that the twins Samuel B. and Samuel C. Towns were born sometime in the year 1923, and that the son John Towns was older than the twin brothers.

Although it was shown that the delayed birth certificates were thereafter obtained by these three boys, and were used by them in attempting to evade registration under the Selective

Service and Training Act, it was not shown that the Petitioner, the Notary Public, had any knowledge at the time of administering the oaths to the affidavits and making his certificate as to the bible record that the facts stated in the affidavits were false or that the records in the bible were untrue. The Petitioner, as a Notary Public, was paid the regular Notary fees for his services, amounting to $3.00, and so far as the evidence shows he had no other connection with the events that later transpired.

There was no direct evidence of any conspiracy on the part of the Petitioner. The bible involved was introduced in evidence and although it had no date of publication therein, examination disclosed that on a second sheet, in print so fine that the Petitioner claimed he could not read it, the date of the issuance of the license for the publication of such bible was stated as March 10, 1939; although Petitioner denied that he noticed such date at the time he examined the bible and made his certificate with reference thereto.

There was no evidence that the Petitioner, the Notary Public, had any knowledge of the fact that the information stated in the affidavits or recorded in the bible was false.

Thereafter the Petitioner testified as a witness for the Government in prosecutions instituted against the Towns boys for attempting to evade the draft, in which said boys were convicted. Subsequent to the conviction of the Towns boys, on June 16, 1945, before the indictment in this case, Petitioner made a written statement to a Special Agent of the Federal Bureau of Investigation with reference to the affidavits made before him and the certificates executed by him, (R. p. 95) which contained no statement as to how old the Towns boys appeared to be in March, 1944 when they appeared before Petitioner to sign their affidavits. However, this Special Agent testified that after he had taken such written statement, the Petitioner made the remark, or stated orally, referring to the Towns boys, that "you *can* look at them and tell they were over 18"; (R. p. 96) and later testified that the words the Petitioner used on that occasion were "you *could* look at them and tell they were over

18". (R. p. 97). On this point there was a conflict as to whether the Petitioner stated 15 or 18 years of age, and whether the Petitioner intended to refer to the time when he took the affidavits or to a later occasion when he saw the Towns boys in Court when he was a witness for the Government.

But for the apparent oversight of Petitioner in failing to discover, in very fine print, the date the license was issued for the printing of the bible, and the construction placed upon what appeared to have been a remark of the Petitioner more than a year afterwards as to the apparent ages of the affiants, when he stated that he paid no particular attention to their apparent ages or any difference between the ages recorded in the bible, and their apparent ages, there would not have been any incidents or circumstances from which the jury could have drawn any inference of guilt on the part of Petitioner. Petitioner insists that these two incidents or circumstances are wholly insufficient to support the verdict in this case; and that the Petitioner should have been given the affirmative charge upon all of the counts of the indictment, or that the verdict should have been set aside, or the Circuit Court should have reversed the judgment of conviction. To support Petitioner's contention, reference is here made to the dissenting opinion by Waller, Circuit Judge. (Appendix A).

B.

STATEMENT OF JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Section 347).

This petition is filed within thirty days from August 5, 1946, the date on which the application for rehearing in said cause was denied by the Circuit Court.

C.

THE QUESTIONS PRESENTED.

(1). Whether or not the evidence was sufficient to sustain a conviction of the Petitioner under the indictment.

(2). Whether or not the evidence was sufficient to sustain a conviction of the Petitioner under Counts 2, 4 and 6.

(3). Whether or not the evidence was sufficient to sustain a conviction of the Petitioner under Count 7. (The conspiracy count).

(4). Whether or not the action of the trial Court in submitting this case to the jury and the action of the Circuit Court in affirming the conviction of the Petitioner without sufficient supporting evidence constitute a denial of the due process of law guaranteed to him under the Fifth Amendment to the Constitution of the United States.

D.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Appellant insists that an examination of the record in this cause will reveal the fact of the entire absence of any proof of conspiracy, or of any fact or circumstance, from which guilt might be inferred, which is not equally consistent with the complete innocence of the Petitioner, whose only acts were performed as an official of the State of Alabama, acting in a ministerial capacity in administering the oath to affiants and acting in a judicial or quasi judicial capacity in examining and certifying to the results of the examination of the family bible presented to him for such purpose. Petitioner, therefore, insists that conviction under the circumstances of this case, and the construction followed in the majority opinion of the Circuit Court constitute such a departure from the accepted and usual course of judicial proceedings or so far sanction such a de-

parture by the District Court, as to call for an exercise of this Court's power of supervision.

It is of public concern that officials acting in a ministerial capacity should not be held criminally responsible for the truthfulness of the contents of affidavits or statements made under oath to such officers. It is contrary to public policy and against the interests of the public to subject a judicial officer to criminal liability for acts done in the performance of his judicial duties, even though negligent or erroneous.

(Brief in support of this petition is hereto annexed).

D.

PRAYER FOR THE WRIT.

Wherefore your Petitioner prays that a writ of certiorari issue out of and under seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding that Court to certify and send to this Court for a review and determination, for a day set therein named, a full and complete transcript of the record and all proceedings in the cause numbered and titled Docket No. 11521, C. J. Adams alias Charlie Adams, Appellant, v. United States of America, Appellee, and that judgment therein rendered by said Circuit Court may be reviewed by this Honorable Court; and that your Petitioner may have such other or further relief in the premises as unto this Honorable Court may seem meet and just; and your Petitioner will ever pray.

JOHN W. LAPSLEY,
Counsel for Petitioner.

T. G. GAYLE,
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO._____

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

Vs.

UNITED STATES OF AMERICA,

BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS BELOW

The opinion of the majority and the dissenting opinion of the United States Circuit Court of Appeals for the Fifth Circuit were rendered on July 9, 1946, and appear as Appendix A hereto.

II.

JURISDICTION

1. Statutory jurisdiction for this petition is founded upon the provisions of Section 240 of the Judicial Code, as amended by Act of Congress of February 13, 1925, (28 U. S. C. A. Sec. 347).

2. The date of judgment of the United States Circuit Court

of Appeals for the Fifth Circuit affirming the judgment of the trial Court was rendered on July 9, 1946; and an application for rehearing in said cause was denied by the Circuit Court on August 5, 1946 (R. p.); and this petition is filed within thirty days from the final judgment of the Circuit Court denying application for rehearing in said cause.

III.

STATEMENT OF THE CASE

Reference is here made to the statement of the matter involved as set forth in the foregoing petition.

There was an entire absence of any evidence showing or attempting to show that petitioner in any way unlawfully aided, counseled or abetted the three Towns boys in failing or neglecting to register under the Selective Service and Training Act on September 19, 1944, as charged in Counts 2, 4 and 6 of indictment.

The only acts performed by the Petitioner were done by him in his official capacity as Notary Public on March 23, 24 and 25, 1944, and consisted in (a) administering oaths to the mother and her three sons, in taking their affidavits to be submitted by them to the Bureau of Vital Statistics of the State Department of Public Health for the purpose of obtaining what are referred to as "delayed" birth certificates; and (b) examining and certifying to certain facts relating to the records of such births, as shown by the family bible presented to such officer, including the appearance and date of publication of such bible.

Count 7 of the indictment charged the Petitioner and others with a conspiracy to aid the Towns boys to evade compliance with the Selective Service and Training Act.

The Towns boys and their parents were shown to have been strangers to Petitioner prior to the occasion of taking the affidavits and making the certificate to the State in connection therewith. Petitioner was paid the customary Notary's fees, aggregating $3.00. These official acts on the part of Petitioner were his only connection with the events alleged as constituting, on the part of the Towns boys and their parents, an attempt to evade the provisions of the Selective Service and Training Act.

It is not alleged in the indictment that the certificate made by the Petitioner was false in any respect, nor was it proved on the trial that any statement therein made by the Petitioner was

false; nor was it shown that the attention of he officer was called to the date of license issued for the printing of the bible, which appeared in very fine print on the second or inside page of the bible. (See discussion of this point in the dissenting opinion by Waller, Circuit Judge, Appendix A).

On June 16, 1945, after Petitioner had appeared as a witness for the Government in the prosecution of the Towns boys for evading registration, a written statement was obtained from him by a Special Agent of the Federal Bureau of Investigation with reference to acts done by him in taking the acknowledgments and making the certificate in reference to the bible (R. p. 95). In this written statement it was not shown whether the Petitioner at the time of taking the acknowledgments and making the certificate noticed any difference between their ages as indicated in the Bible record and as might have been indicated to him from their appearance, or whether he knew at that time the purpose of obtaining the delayed birth certificates. The Special Agent in testifying for the Government stated that Petitioner said when the Towns boys walked in "you could look at them and tell they were over 18". (R. p. 94). When asked to state the exact words used by the Petitioner the witness stated he said: "you *can* look at them and tell they were over 18." (R. p. 96). This same witness again in two instances stated that the Petitioner said, "you *could* look at them and tell they were over 18." (R. p. 97). H. L. Dickerson, Chief of Police of the City of Selma, testified for the Government that he was present at the time these statements were made by Petitioner to the F. B. I. Agent, and that in replying to an inquiry as to the appearance of the Towns boys and how old Petitioner thought they were, he said he thought they looked like they were over 18 years in his opinion. (R. 97-98). This testimony was contradicted by Petitioner, who testified that he told the F. B. I. Agent that in his opinion the Towns boys were over 15 years of age on the date they appeared before him in March, 1944, but Petitioner explained that such opinion was not formed by him until afterwards when he saw these boys at the time of their trial on a charge of evading the Selective Service and Training

Act, in which case Petitioner had testified for the Government.

Petitioner insists that he has been done a grave injustice; first, in the submission of the case to the jury under such circumstances; and, secondly, that the District Court and the Circuit Court erred in not having ordered the verdict set aside as being unsupported by the evidence.

IV.

ASSIGNMENT OF ERRORS.

1. The Court below erred in affirming the judgment of the trial Court.

2. The Court below erred in not holding the evidence was wholly insufficient to support the verdict of the jury or the judgment of conviction entered thereon by the District Court .

V.

ARGUMENT

Point I.

The Petitioner, as a Notary Public, in administering the oath to affiants, in taking their affidavits, was performing a ministerial act; and the officer did not certify to the truthfulness of the contents of the affidavits.

We are not aware of any decision that an officer in administering an oath under such circumstances becomes civilly or criminally responsible for the truthfulness of the contents of the affiant. Any other rule would jeopardize or imperil the officer and hinder his performance of necessary duties required in the public interest. It is for this reason the duties of the officer do not require him to ascribe to or pass upon the truth or falsity of the statement contained in an affidavit. The falsity of a statement contained in an affidavit, without more, does not constitute a circumstance which would support an inference of guilt against the officer. (See dissenting opinion by Waller, Circuit Judge, Appendix A)

In the instance herein involved, it was not shown that the officer knew that the dates of the births of affiants as therein stated were untrue, but to the contrary he had the assurance of the mother and the Bible record that the dates were correct. The officer at the time may have thought that the boys appeared to be older than their dates of birth indicated, but it was not incumbent upon him to take issue with the mother or to dispute the bible record. The appearance of the boys or their apparent ages were not discussed, and he apparently gave no thought thereto until sometime afterwards, when he saw the boys at their trial, in which case he appeared as a witness for the Government. Later, on June 16, 1945, when questioned by the F. B. I. Agent as to how old the boys appeared to him to be, he expressed an opinion. Petitioner contends that his statement was to the effect that they appeared to be over 15 years of age,

although the F. B. I. Agent testified that his statement was "you can look at them and tell they were over 18" or "you could look at them and tell they were over 18". This statement made more than one year afterwards related his impression of a past transaction. Petitioner was not then charged with committing any offense. It was no confession of guilt on his part. It was not an admission of conspiracy. It was an attempt honestly to convey his impression of a past transaction. After he learned that the statement in the affidavits and the record in the bible were false, he was in sympathy with the prosecution of the guilty parties, as indicated in his answer.

POINT II.

Petitioner as a Notary Public in making the certificate in reference to the examination of the family Bible and his findings therefrom was acting in a judicial or quasi judicial capacity.

Orendorff v. Suit, 52 So. 744; 167 Ala. 563.

Byrd v. Bailey, 53 So. 773, 169 Ala. 452.

Moore v. Bragg, 103 So. 452, 212 Ala. 481.

It is not alleged in the indictment that the facts contained in the certificates made by the Petitioner were false, nor was it shown by the testimony that any statement made in the certificate was false. It is true that in the certificate as to the date of the bible the Petitioner finding no date therein inserted in the blank space the words "year not shown". Although on the second page, in very fine print, there appeared a statement to the effect that a license to print such bible had been issued in 1939. There was no proof that Petitioner saw or read the date of the license, and the circumstances do not show that he was remiss in having failed to discover such date.

An officer in performance of a judicial function is not liable for any error or mistake in judgment. (*Williams vs. Weaver*, 100 U. S. 547).

The primary purpose of the rule exempting public officers from actions for damage in the performance of a public duty is to secure a fearless administration of the law. (*Booth v. Fletcher*, 101 Fed. 667, Certiorari denied 307 U. S. 628).

It has been held that the interest of the public requires that certain protections be accorded to public officials in the performance of their official acts. (*Cooper vs. O'Connor*, 105 F. 2d 761).

It would be contrary to these well recognized rules and against public interest to hold the officer liable civilly or criminally because (a) the contents of an affidavit was later found to be false; or (b) in making the examination and certificate in reference to the bible the officer did not discover the date the license was issued to the publisher for the publication of the Bible. For these reasons, such incidents standing alone may not support an inference of guilt.

It should be remembered that the Notary on this occasion was not required or permitted to express any opinion of his own as to the ages of the Towns boys. Furthermore, there is no proof or presumption that the birth certificates would not have been issued as they were even if the officer had found and inserted in the certificate the year 1939 as the date the bible was published or licensed to be published. It is common knowledge that families often purchase bibles in which they record the names and dates of births of their children, even though born before the date of publication. The form of the State's certificate recognizes such fact. That the Bible had an appearance of age, was not disputed.

Point III.

The evidence is insufficient to support the verdict, and the Court below erred in not reversing the judgment rendered by the trial Court.

Petitioner feels that there has been a miscarriage of justice.

This may partly be accounted for by the fact the Town boys, aided by their parents, were found to be guilty of an attempt to evade a patriotic service to their country. The jurors apparently had a deep seated patriotism in November, 1945, upon the trial of this case, which seems to have engendered a prejudice against Petitioner, a negro Notary Public. This prejudice may have unconsciously affected the judgment of the jurors, in their desire to make a public example by punishing everyone who performed the slightest act in connection with the transaction. Surely, such a prejudice wher found to exist should be corrected by our Courts in order to maintain the proper respect for the judiciary, and to protect the rights guaranteed to Petitioner under the Constitution. Unless the judgment in this cause is reversed it appears that Petitioner will have been denied the full protection of his Constitutional rights, contrary to the settled rules approved by this Court not to permit a verdict to stand which is palpably contrary to the evidence.

CONCLUSION

It is respectfully submitted that the facts and circumstances of this case are such that the records of the proceeding therein should be reviewed by this Court to avoid a grave miscarriage of justice, apparently the result of a prejudice arising from an intense patriotism on the part of the jurors; and to correct an erroneous construction of criminal responsibility arising from the performance by an official of ministerial or judicial acts in rendering necessary services to the public.

Respectfully submitted,

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Of Counsel for Petitioner.

CERTIFICATE

I hereby certify that I have this day mailed a copy of the foregoing petition and brief to Albert J. Tully, Esquire, United States District Attorney, Mobile, Alabama, attorney of record for Respondent.

This the 31st day of August, 1946.

JOHN W. LAPSLEY,
Counsel for Appellant.

APPENDIX A

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT.

NO. 11521

C. J. ADAMS *alias* CHARLIE ADAMS,
Appellant,

Vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

(July 9, 1946.)

Before HUTCHESON, WALLER, and LEE, Circuit Judges.

LEE, Circuit Judge: The appellant in this case is by profession a notary public. John Towns and his two brothers, Samuel B. and Samuel C. Towns, who are twins, are sons of Walter Towns and Carrie Lee Towns. The appellant and the parents were indicted on four separate counts for unlawfully aiding, counseling, and abetting the three sons in failing and neglecting to register under the Selective Training and Service Act and for conspiring together and with the three sons to cause each unlawfully and knowingly to evade registration under the act

by falsely representing that John Towns was born on October 9, 1928, and Samuel B. and Samuel C. Towns, on June 9, 1930. Walter Towns and Carrie Lee Towns entered pleas of guilty. A jury found appellant guilty on all four counts, and appellant received a general sentence of one year and one day in the penitentiary and a fine of $250. Appealing from the sentence thus imposed, appellant presents for our consideration the following questions:

1. Did the evidence warrant a finding that John Towns, Samuel B. and Samuel C. Towns were above the age of 18 years and old enough to register, as alleged in the indictment?

2. Did the evidence warrant a finding that appellant unlawfully and knowingly did aid, counsel, and abet the three brothers in their failure to present themselves for and submit to registration?

3. Did the evidence warrant a finding that appellant entered into a conspiracy with the three brothers and their parents, having for its purpose aiding and abetting the brothers in evasion of the Selective Service Act by failing to register?

4. Did the court err in admitting certain evidence over objection during the trial?

5. Did the court err in refusing to give the jury certain written instructions?

The facts briefly stated are: After Selective Service Local Board No. 2, Dallas County, Alabama, received reports that the three sons had not registered in compliance with the Selective Service Act, on March 21, 1944, it wrote John Towns to report without delay. Several days later the parents appeared before representatives of the board in place of their son. After this appearance, but on the same day, Carrie Lee Towns called upon appellant to enlist his aid in obtaining delayed birth certificates for her sons. Appellant filled out three applications for delayed birth certificates and explained to her the need for sup-

porting documentary evidence. The next day she appeared at his office with a "family Bible" containing the names of each of the three children with three alleged dates of birth. Having examined the Bible, appellant set forth in separate certificates the information relating to the birth dates. Later, on the same date, the three sons appeared before him, and each signed an affidavit setting forth the date of his birth as that inscribed in the Bible. Appellant testified that he asked them no questions relative to these dates. All papers prepared, including the certificates of appellant in his capacity as notary, were filed with the state board of health in Montgomery, Alabama. Thereupon, delayed birth certificates were issued and were filed with the Selective Service Board to support the contention that the boys were under the draft age.

Without material contradiction the testimony showed that the twins were born on June 9, 1923, and that John Towns was one or more years older than the twins. When they appeared before appellant, all three, therefore, were above the age of twenty.

The certificate executed by appellant with reference to the family Bible for John Towns reads:

> "I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns."

The two certificates prepared for the twins were identical with that prepared for John except that in one the name of Samuel B. appeared and in the other the name of Samuel C. appeared, and that the date of birth in these two certificates was given as June 9, 1930. Government agents testified that

appellant stated that when he first saw Carrie Lee Towns' three sons in his office in March of 1944 he believed them to be over eighteen years of age.

It was shown that appellant was experienced in matters connected with the Selective Service Act and with the procedure for obtaining delayed birth certificates. His contention that for ought he knew the Towns brothers desired birth certificates to enable them to obtain defense-plant work is meritless because the birth dates set forth would disqualify them for such work. In the light of appellant's experience in having filled out over one thousand papers in connection with the Selective Service Act, the date given in the applications for delayed birth certificates would have informed him that the accompanying certificates executed by him would be used only for the single purpose of evading registration under the Selective Service Act.

No effort was made by appellant to ascertain whether the doctor or midwife in attendance at the birth of the brothers recorded the births with the state board. In view of his knowledge that the state law required births to be registered and that the state authorities issued delayed birth certificates only in the absence of prior recordation, appellant's failure first to investigate the records of the state board was a circumstance the jury could consider to show guilt.

Appellant certified that the birth dates of the sons "appear to have been recorded many years ago." The Bible itself was published in England and could not there have been lawfully printed and published prior to the issuance of a license for so doing. Although containing no publication date, the Bible did contain, at a place where the publication date would ordinarily be found, the date of the English license, March 10, 1939. The jury could conclude that a reasonable man after inspecting this Bible would not without sinister motives certify that the dates of births "appear to have been recorded many years ago."

To discredit his contention that he knew not why Carrie Lee Towns wanted the delayed birth certificates, the prosecution

introduced into evidence appellant's plea of guilty to a previous indictment charging him with falsely certifying, as a notary public, that a person who actually was deceased appeared before him to make a demand for payment, this certificate being later forwarded by appellant to the Veteran's Administration.

The evidence warranted the jury in concluding that appellant knew for what purpose Carrie Lee Towns sought to obtain delayed birth certificates for her three boys and that her affidavits and their affidavits as to the dates of their births were false; that appellant knew the weight under Alabama law of his certificate concerning the age of the family Bible and the authenticity of the record births therein; and that by certifying that the year of publishing was not shown and that the dates "appear to have been recorded many years ago" appellant intended to enable the boys to obtain fallacious delayed birth certificates. Hence, the evidence warranted finding the appellant guilty of aiding and abetting the three brothers in their failure to present themselves for and submit to registration, and of conspiring with Walter and Carrie Lee Towns and their three sons to enable the latter to evade registration under the Selective Service Act.

The contention that the introduction of volunteered information into the record was reversible error is without merit since the court ordered it stricken. The testimony that appellant frequented the county health office to obtain birth and death certificates was properly admitted to show appellant's knowledge of the services available in that office and to show familiarity with the procedure necessary to obtain delayed birth certificates.

To establish the year of birth of the Towns twins, an aunt, who lived in the same locality and was a sister of their mother, testified that she gave birth to twin girls in December, 1923, and that her sister, the mother of the Towns twins, gave birth to twin boys earlier the same year. In corroboration, the Government offered two birth certificates showing the birth in December, 1923, of Mary and Sally Peterson. As the witness had

testified that the twin girls were named Reby and Ruby Peterson, the objection was made that the identity of the twins in the birth certificates was not proved. Evidence was introduced to show that the midwife in attendance filed the certificates, that the names and addresses of the parents and midwife were correct on the certificates, and that the witness and her husband had only one set of twins. The Government also offered in evidence certificates showing birth of Isaac and Isham Towns, twin sons, to Walter and Carrie Lee Towns on June 9, 1923. The Government proved in connection with the offering that Samuel B. and Samuel C. Towns were the only twins born to Walter and Carrie Lee Towns, and that they were born prior to the birth of the Peterson girls in the year 1923. It was further shown that the midwife who filed the certificates and whose name appeared as such therein was the midwife in attendance at the birth of Samuel B. and Samuel C. Towns. The evidence, we think, properly identified the certificates with the Peterson twins and with the Towns twins. With the foundation thus laid the certificates were properly received in evidence.

Numerous written requested charges were denied, appellant says, to his prejudice. A more favorable charge for appellant could hardly have been given. The record shows that the requested charges either were covered in the court's general charge or were without support in the evidence.

No reversible error appearing, the judgment appealed from is

AFFIRMED.

WALLER, Circuit Judge, dissenting:

I am unwilling to attach criminal consequences to the act of notarizing a false affidavit in the absence of clear proof that the Notary counselled or procured the making of such an affidavit with knowledge of its falsity. A Notary is not required to vouch for the truth of the affidavits which he takes. He commits no crime in merely administering the oath of another even if he thinks it is false any more than does the Clerk when

he swears a witness to a deposition which the Clerk might have reason to believe is false.

The affidavits were prepared by Appellant from information supplied by the mother of the three boys, and were prepared before Appellant ever saw those affiants. The fact that when they came in the next day to swear to the affidavits their ages appeared to Appellant to be greater than the ages which had been stated did not make him a felon merely because of the fact that he administered the oath to the affiants.

The Government used eighteen witnesses in convincing the jury that the ages of the Towns boys were greater than those stated in their affidavits. Nevertheless, its attorney urges that Appellant, in face of their affidavits, their mother's statement, and the birth dates written in the ancient-looking Bible, should be deemed a criminal because he did not of his own motion adjudge that the ages stated were false, notwithstanding the fact that the law does not cast upon a Notary this responsibility.

Appellant also made three certificates as to dates of birth appearing in the family Bible, but there is nothing false on the face of those certificates. The Bible was transmitted to this Court as an original exhibit. It has every external appearance of being very old. Dates purporting to show the birthdays of the Towns children are written in it. The date of publication of the Bible is not shown, but tucked away in very fine print is a statement that a license to print it was not issued until 1939. A failure by Appellant to discover this date is thoroughly understandable. Such an oversight could easily and likely occur, and, if so, it should not be characterized as the act of a felon.

He received only $3.00 for: writing six affidavits; making his certificate for each of the three sons; advising the mother as to the requisites to obtain delayed birth certificates; and taking the oaths of the three boys and their mother to those affidavits. This small sum is not sufficient to create the inference that his act was even venal, much less criminal.

The evidence as to the Appellant's knowledge and intent is

entirely circumstantial and signally fails, in the writer's view, to exclude every reasonable hypothesis other than that of Appellant's guilt. This negro may have been guilty of advising the making, and of aiding in the making, of false affidavits, but the evidence leaves too much to the imagination. His acts are as consistent with innocence as they are with guilt. The jury was never instructed that where circumstantial evidence is relied on to prove a material fact in a criminal case the circumstances must be such as to exclude every reasonable hypothesis other than the existence of the fact sought to be proven. But since no request was made for such a charge, and no exception taken to the failure to give such a charge, I would not reverse for this reason. I cite the failure to give such a charge merely as one explanation why the jury may have brought in a verdict of guilty without sufficient support, as I see it, in the evidence. I think the judgment should be reversed.